

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 490 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NILESH J BHIMANI

Versus

AHMEDABAD MUNICIPAL CORPN  
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Appearance:

MR PM RAVAL for Petitioner  
MR PRASHANT G DESAI for Respondent No. 1  
MR NS DESAI for Respondent No. 3  
MR NIRZAR S DESAI for Respondent No. 4,15  
RULE SERVED for Respondent No. 7  
SERVED BY AFFIX.-(R) for Respondent No. 11  
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CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 27/04/2000

ORAL JUDGEMENT

#. This petition under Article 226

of the Constitution is filed for a writ of mandamus or any other appropriate writ, order or direction directing the Ahmedabad Municipal Corporation to hand over peaceful and vacant possession of final plot no.319 measuring 490 sq.yds., which has been allotted to the petitioner under a Town Planning Scheme.

#. The petitioner's grand father owned and possessed original plot no.111. It came under the Town Planning Scheme, Ahmedabad No.19 (Memnagar) (Final). Under the Town Planning Scheme the petitioner was given Final Plot No. 313, measuring 5347 sq.yds. and plot no.319 measuring 490 sq.yds.

#. The area of the original plot no. 111 was 7617 sq.yds. but in the final scheme the petitioner was allotted the said two final plots, the total area of which was 5347 sq.yds. The possession of plot no.313 was handed over to the petitioner's grand father but the possession of plot no. 319 was not handed over to him.

#. On 15.7.1971 the petitioner's grand father addressed a letter to the Deputy Estate Officer, Ahmedabad Municipal Corporation drawing his attention to the fact that Town Planning Scheme had come into force long back but the possession of the final plot no. 319, which had been allotted to him, had not been handed over to him. He, therefore, requested him to take immediate steps for handing over possession of the said plot. The petitioner's grand father, who died on 5.6.1979, had, by his will dated 4.5.1979, bequeathed the plot in question to the petitioner. The petitioner has produced the correspondence exchanged between the grand father and the petitioner on one hand and the respondent corporation on the other at Annexures 'C' to 'K'. It appears that the Estate Officer of the Corporation had called upon the petitioner to pay the petitioner's betterment charges. The petitioner's stand was that the Corporation had still not handed over the possession of the plot and interest on betterment charges should be calculated only from the date on which the possession is handed over to him. In reply the Estate Officer by his letter dated 27.1.1991 had intimated that steps had been taken to hand over possession but in view of the suit which was pending it was not possible to hand over possession immediately. Again the petitioner by his letter dated 27.1.1982, addressed to Municipal Commissioner, had drawn his attention to the fact that under the scheme the open land is taken away and the plot with hutments had been

allotted to him and it was the duty of the corporation to hand over the vacant possession of the said land to him. He, therefore, requested the Commissioner to arrange to deliver possession of the plot to him or return the original vacant land which had been taken away from the petitioner. The petitioner also, thereafter, addressed several other letters and, ultimately, the petitioner filed the present petition on 31.1.1985. Notice was made returnable on 11.2.1985. Rule was issued on 22.2.1985 and the situation as it existed on that day was ordered to continue.

#. Now as far as the duty of the corporation to hand over vacant possession of the plot is concerned the law is well settled. In Special Civil Application No. 4696 of 1985 which was decided on 28.6.1993, a Division Bench, relying on the decision of the Supreme Court reported in AIR 1972 SC 793 said as follows :

"The position of law is not at all disputed before this Court and Mr.P.M.Raval, learned Counsel appearing for the petitioners has placed reliance upon the decision of the Supreme Court in the case of The Municipal Corporation of Greater Bombay and Another Vs. The Advance Builders (India) Pvt. Ltd. and Others reported in AIR 1972 Supreme Court p.793. From the principle of law enunciated therein, it becomes clear that the Scheme and the Regulations made thereunder must be read as supplemental to the Act and, when that is done, there is no room for any doubt whatsoever that the local authority is entirely responsible for removing the huts, sheds, stables and other temporary structures which contravene the Town Planning Scheme. It is, therefore, clear that on a consideration of the Bombay Town Planning Act, 1954 and especially Sections 53 to 55 of the said Act, the Corporation is exclusively entrusted with the duty of framing and implementation of the Town Planning Scheme and, to that end, Corporation has been invested with almost plenary powers. Since development and planning is primarily for the benefit of the public, the Corporation is under an obligation to perform its duty in accordance with the provisions of the Act."

#. The same view was taken by the learned Single Judge in First Appeal No. 1355 of 1981 who negatived the argument on behalf of the Corporation that the shortage

of residential accommodation did not permit the corporation to implement the scheme and that the resolution had been passed by the Corporation not to disturb the occupants who came upon the land prior to 1976. The learned Judge held that such a policy of the Corporation is irrelevant for the reason that it cannot run counter to its statutory duty.

#. It cannot therefore be disputed that the Corporation is under a duty to hand over vacant and peaceful possession of the plot in question after removing all unauthorised sheds, huts, stables and other temporary structures standing and lying on the plot.

#. The Deputy Estate Officer of the respondent corporation who filed his affidavit in reply on 16.10.1996 submitted that there were 12 hutments on the plot which were prior to 1976 and if the Court directs the Corporation to remove the hutments the said hutments cannot be removed unless the Corporation gives them alternative plots in view of the resolution passed by the Corporation in the year 1976. He also stated that the Corporation had already proposed to reserve the plot in question for slum upgradation but in view of the pendency of this petition the status quo order passed by this Court, no further actions were taken under the provisions of Town Planning Act. However, as stated earlier, it was held by this Court in First Appeal No. 1355 of 1981 that any such policy of the Corporation was irrelevant and the Corporation was duty bound to remove the hutment dwellers and hand over possession of the plot to a person to whom it has been allotted under the Town Planning Scheme. At the same time, in the present case, though the Corporation had proposed to reserve the plot for slum upgradation, no further action can be taken in view of the status quo order in this petition and the Corporation cannot be prevented from proceeding with its proposal under the provisions of Town Planning Act. However, if the Corporation does not take effective steps to reserve the plot for slum upgradation it is bound to hand over vacant possession of the plot to the petitioner. Hence, it is necessary to direct the Corporation either to take decision to reserve the plot for slum upgradation and initiate appropriate action under the provisions of Town Planning Act or to give vacant possession of the plot to the petitioner.

#. It appears that previously when this petition came up for hearing before S.K.Keshote, J on 21.10.1999, the learned Counsel for the Corporation furnished a list of

13 persons who, according to the Corporation, were unauthorised occupants of the land. The learned Judge ordered them to be impleaded as party respondents and notice was also issued to them. On behalf of those 13 persons, one of them, namely, respondent no.4 has filed affidavit in reply. In para 2 of the affidavit it is stated that they are not residing in the plot of the petitioner but are residing in plot no.318 and hence they have been wrongly impleaded as parties. In para 6 of the affidavit it is stated that the Civil Suit is already pending in City Civil Court, Ahmedabad in which majority of the respondents are actually parties. It is not the case of the respondents that the said suit pertains to final plot no.313 which is the subject matter of this petition. In any case, it is not necessary to decide in the present petition who is in unauthorised occupation of the plot in question. The Corporation is bound to take steps to evict whoever is in unauthorised occupation of the plot and hand over peaceful vacant possession to the petitioner. The petition is therefore allowed. The respondent corporation shall within a period of one year from the date of the receipt of this order either decide whether to reserve the plot in question for slum upgradation and initiate appropriate action in accordance with the provisions of the Town Planning Act or remove all unauthorised sheds, huts and other temporary structures standing and lying on final plot no.319 of the Town Planning Scheme, Ahmedabad No.19 (Memnagar) and hand over vacant and peaceful possession of the same free from all encumbrances to the petitioner. Rule is made absolute accordingly. No order as to costs.

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m.m.bhatt